

Timothy T. Pridmore; SBN: 00788224
Todd J. Johnston; SBN: 24050837
MCWHORTER, COBB & JOHNSON, LLP
1722 Broadway (79401)
P. O. Box 2547
Lubbock, Texas 79408
806/762-0214; 806/762-8014 (fax)
Attorneys for Debtors 2B Farms, a Texas General Partnership,
Terry M. Robinson, Rebecca A. Robinson

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

In re:	§	
	§	Case No. 23-50084-rlj7
MCCLAIN FEED YARD, INC., et al.¹,	§	
	§	Jointly Administered
	§	
Debtors.	§	Chapter 7

**DEBTORS 2B FARMS, A TEXAS GENERAL PARTNERSHIP, TERRY M. “BO” ROBINSON
AND REBECCA A. ROBINSON’S AMENDED RESPONSE TO RABO’S MOTION FOR RELIEF
FROM THE AUTOMATIC STAY OR, ALTERNATIVELY, FOR ABANDONMENT OF
CERTAIN CATTLE AND PROCEEDS OF CATTLE**

TO THE HONORABLE ROBERT L. JONES, BANKRUPTCY JUDGE:

COME NOW, 2B Farms, a Texas General Partnership, Terry M. “Bo” Robinson and Rebecca A. Robinson, (collectively, “Respondent”, “Debtor” and/or “2B Farms”) and file this *Amended Response to Rabo’s Motion for Relief from the Automatic Stay or, Alternatively, for Abandonment of Certain Cattle and Proceeds of Cattle* (“Response”), and in support of same would show unto the Court as follows:

II. FACTUAL BACKGROUND

1. McClain Feed Yard, Inc., McClain Farms, Inc., and 7M Cattle Feeders, Inc. (collectively, the “McClain Debtors”) filed for relief under Chapter 7 of the United States Bankruptcy Code on April 28, 2023. Kent Ries was subsequently appointed and qualified to serve as the Trustee over the three bankruptcy estates.

¹ The Debtors in these Chapter 7 cases are: McClain Feed Yard, Inc. (Case No. 23-20084-RLJ), McClain Farms, Inc. (Case No. 23-20085-RLJ), and 7M Cattle Feeders, Inc. (Case No. 23-20086-RLJ)

2. Rabo AgriFinance LLC (“Rabo”), filed its *Motion for Relief from the Automatic Stay or, Alternatively, for Abandonment of Certain Cattle and Proceeds of Cattle* [Dkt. #192] on March 12, 2024, asserting a lien on cattle and/or their proceeds, which it claims were allegedly property of the McClain Debtors prepetition. The facts related hereto are more fully addressed below.

3. On June 1, 2023, the Debtors, 2B Farms and Terry M. “Bo” Robinson and Rebecca A. Robinson filed their respective voluntary petitions for relief under chapter 12 of title 11 of the United States Code (the “Bankruptcy Code”). Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate their farming and ranching affairs and assets as debtors-in-possession. These bankruptcy cases were administratively consolidated by Order of the Court under Bankruptcy Case No. 23-50006-rlj12; in the United States Bankruptcy Court for the Northern District of Texas, Lubbock Division.

4. On or about December 15, 2023, the Court entered its *Order Confirming Debtors’ Amended Joint Chapter 12 Plan of Reorganization* [Dkt. # 124].

5. Prior to any of the bankruptcy proceedings listed above, during the first week of April 2023, 2B Farms had in the McClain feed yard (Hereford, Texas) (1) **251 head of 2B Farms’ own branded cattle** and (2) **an additional 338 head of cattle which 2B Farms had purchased from McClain Feedyard, Inc.** and which were held at the 7M feed yard (Friona, Texas) as part of a separate transaction.

6. About this time as news of the McClain scheme arose, many cattlemen who had cattle at the McClain Feedyards went to the two feed yards in Hereford and Friona in order to reclaim their cattle. Special Rangers of the Texas & Southwestern Cattle Raisers’ Association (“T&SWCRA”) and other authorities were on site to supervise the removal of the reclaimed cattle. The T&SWCRA Special Rangers kept records of the cattle being reclaimed upon presentation of documentary proof of ownership to the Special Rangers by the cattlemen. Moreover, given the circumstances of the McClain operations at this time, the McClain feed yards did not have anyone on hand to feed or properly care for all the cattle in the two feed yards.

The 338 Head of 2B Farms' Cattle

7. The cattle which 2B Farms reclaimed on April 19, 2023 (approximately 60% of the cattle identified or 338 head) were placed in the grow yard of Tommy Hefner. On May 18, 2023, those 338 head of reclaimed cattle were sold at the Tulia Livestock Auction. After the payment of trucking costs and commission fees to Tulia Livestock Auction, Tulia Livestock Auction issued a check in the amount of \$398,588.37 to 2B Farms and First Bank & Trust. First Bank & Trust was 2B Farms lending institution and had liens on cattle owned by 2B Farms. 2B Farms had agreed to turnover said proceeds to First Bank & Trust given said liens. First Bank & Trust had previously also paid Tommy Hefner \$39,707.55 for feed and care costs related to these 338 head of cattle. The resulting net proceeds for these 338 head of cattle is \$358,880.82. Pursuant to a written agreement with Kent Ries, Trustee of the McClain bankruptcy cases, the net proceeds from the sale of these 338 head of cattle were placed into a segregated account with HTLF Bank, where such funds remain. *See attached Exhibit "A".*

The 251 Head of 2B Farms' Cattle

8. The second group of cattle which 2B Farms reclaimed on April 19, 2023, consisted of 251 heifers which Bo Robinson (2B Farms) had himself raised as calves on his own ranch, but then moved to the McClain feed yard in Hereford, Texas for finishing. 2B Farms always owned these cattle. These cattle had the "2B" brand upon them. They had never been sold by 2B Farms to Brian McClain, nor to any of Brian McClain's business entities, nor to anyone else other than the Fist Bank & Trust lien, there was never a lien nor claim by third-parties for these cattle, until now. Because these cattle had always been solely owned by 2B Farms, none of the McClain entities ever had any rights in these cattle (and therefore no lien of Rabo attached).

9. On May 17, 2023, these 251 head of cattle were taken to the Tulia Livestock Auction and on May 18, 2023, which were sold. After payment of the feed and care costs of Mr. Tommy Hefner and the payment of trucking costs and the commission charges of Tulia Livestock Auction, this group of cattle netted \$296,105.00 (\$326,872.59 from Tulia Livestock Auction - \$30,767.58 for feed and care paid to

Tommy Hefner). Pursuant to an agreement with the bankruptcy trustee, Kent Ries, these funds were deposited into a segregated account of First Bank & Trust, where they remain. *See attached Exhibit "A".*

10. HTLF, successor in interest to First Bank & Trust, claims a perfected first priority security interest in all the livestock of 2B Farms, as well as all proceeds from the sale of the cattle identified in this Response. This lien and claim is subject to a dispute between the parties in a pending adversary proceeding in the 2B Farms bankruptcy case.

II. ARGUMENT

11. 2B Farms owned and controlled the cattle that are the subject of Rabo's Motion and their proceeds that are related to 2B Farms. In this regard, Rabo would have no lien rights to the 338 hd or the 251 hd it recovered from the McClain Feed Yards and/or their proceeds as a matter of law.

12. Section 362(a)(1) of the Bankruptcy Code provides for an automatic stay of any judicial "proceeding against the debtor." 11 U.S.C. § 362(a)(1). "Section 362(a)(3) provides that the filing of a petition 'operates as a[n] [automatic stay] applicable to all entities, of ... any act to obtain possession of property of the estate or of property from the estate.' " *See Matter of S.I. Acquisition, Inc.*, 817 F.2d 1142, 1148 (5th Cir.1987) (quoting 11 U.S.C. § 362(a)(3)). As 2B Farms' cattle are not property of the McClain bankruptcy estate and are instead property of 2B Farms' bankruptcy estate, the automatic stay applicable to the 2B Farms' bankruptcy proceeding applies, and, therefore, the relief requested by Rabo should be denied in all things.

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth above, Debtors 2B Farms, a Texas General Partnership, Terry M. "Bo" Robinson and Rebecca A. Robinson pray that the Court deny Rabo's *Motion for Relief from the Automatic Stay or, Alternatively, for Abandonment of Certain Cattle and proceeds of Cattle* as it applies to 2B Farms' cattle, together with such other and further relief, general or special, legal or equitable, to which they may show themselves justly entitled.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,

MCWHORTER, COBB & JOHNSON, L.L.P.
1722 Broadway
P.O. Box 2547
Lubbock, Texas 79408
(806) 762-0214 - Telephone
(806) 762-8014 – Facsimile

Timothy T. Pridmore
SBN: 00788224
tpridmore@mcjllp.com
Todd J. Johnston
SBN: 24050837
tjohnston@mcjllp.com

By: /s/ Timothy T. Pridmore
Timothy T. Pridmore

***ATTORNEYS FOR DEBTORS 2B FARMS, A
GENERAL TEXAS PARTNERSHIP, TERRY M.
ROBINSON, AND REBECCA A. ROBINSON***

CERTIFICATE OF SERVICE

I, Todd J. Johnston, do hereby certify that a true and correct copy of the foregoing *Amended Response* was served by either court enabled electronic service or regular first-class U. S. Mail upon the following listed parties on this 29th day of March, 2024:

1. Michael R. Johnson
RAY QUINNEY & NEBEKER P.C.
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Attorneys for Rabo AgriFinance LLC
2. All parties registered to receive electronic service in
this bankruptcy proceeding

/s/ Timothy T. Pridmore
Timothy T. Pridmore

No. DC-2023-CV-0565

FIRST BANK & TRUST,

\$ IN THE 72ND DISTRICT COURT

Plaintiff,

v.

\$ IN AND FOR

2B FARMS, INC.,
TERRY ROBINSON, and
REBECCA ROBINSON,

\$ LUBBOCK COUNTY, TEXAS

Defendants.

AGREEMENT

I.

Parties

1. The parties to this agreement are Kent Ries, in his capacity as Chapter 7 Bankruptcy Trustee for the bankruptcy estates of McClain Farms, LLC, McClain Feed Yard, LLC, and 7M Cattle Company, on the one hand, and First Bank & Trust, secured lender to 2B Farms, and 2B Farms.

II.

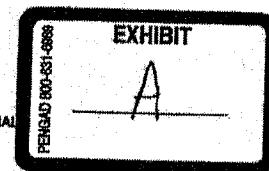
Background

2. First Bank & Trust is the secured lender to 2B Farms, having a perfected first lien on all livestock of 2B Farms. 2B Farms sold certain of its cattle to McClain Farms, cattle on which First Bank & Trust held a perfected first lien. 2B Farms also owned cattle which were placed in a feed yard of McClain Feed Yard for feeding.

3. Kent Ries is the acting Chapter 7 Trustee for the Chapter 7 bankruptcy proceedings of McClain Farms, LLC, McClain Feed Yard, LLC, and 7M Cattle Company.

4. On April 19, 2023, 2B Farms reclaimed approximately 338 heifers from McClain Feed Yard which he had previously purchased from McClain Farms. (the "Reclamation Heifers").

5. In March of 2023, 2B Farms placed approximately 251 of its heifers on feed with McClain Feed Yard, which heifers were not sold to McClain. On April 19, 2023, 2B Farms picked



up these cattle (the "Recovered Heifers"). The heifers were not associated or related to McClain or his entities.

6. On April 19, 2023, both the Reclamation Heifers and the Recovered Heifers were placed in the care of Tommy Hefner for feeding and care by the parties.

7. 2B Farms and First Bank & Trust have agreed that the Reclamation Heifers and the Recovered Heifers should be sold, and the proceeds escrowed.

8. On May 15, 2023, First Bank & Trust paid Tommy Hefner \$70,471.26 for his feed and care charges for the Reclamation Heifers and the Recovered Heifers from April 19, 2023 through May 16, 2023. First Bank & Trust paid this \$70,471.26 to satisfy Tommy Hefner's agister's lien claim against the Reclamation Heifers and the Recovered Heifers through May 16, 2023. The feeding care charges for the Reclamation Heifers and the Recovered Heifers is now accruing at approximately \$2,610.19 per day.

**III.
Agreement**

9. The parties to this agreement agree as follows in regard to the Reclamation Heifers and the Recovered Heifers:

a. 2B and First Bank & Trust agree to gather and preserve all their documentary and photographic evidence regarding the Reclamation Heifers and the Recovered Heifers, including all invoices, shipment records, checks, and return item notices, as well as all documentary and photograph evidence to show how, when and where those cattle were reclaimed and recovered, as well as all identifying information regarding all such cattle. All this photographic and documentary evidence will be available to Kent Ries upon his request.

b. 2B and First Bank & Trust will agree upon the livestock auction or auctions which will market the Reclamation Cattle and the Recovered Cattle through their auctions.

c. 2B and First Bank & Trust will arrange for the cattle to be shipped from the Tommy Hefner facility to the respective auctions.

- d. First Bank & Trust will pay to Tommy Hefner those feed and care charges which have accrued against the Reclamation Cattle and the Recovered Cattle between April 19, and the date of shipment.
- e. Upon receipt of the proceeds of the auction sales of the Recovered Cattle and the Reclamation Cattle, First Bank & Trust may reimburse itself for the feed and care charges it has paid on or after May 15, 2023, as well as reimbursing itself for any trucking charges associated with the shipment of the cattle from Tommy Hefner's facility to the auction or auctions. All other proceeds of the auction sales shall be placed into a segregated account with First Bank & Trust, with the express agreement and restriction that no portion of such deposited funds shall be transferred, paid or offset without bankruptcy court authority and approval after notice and hearing.. First Bank & Trust shall provide Kent Ries with bank statements for this account on no less than a quarterly basis, and as requested by Kent Ries.
- f. Kent Ries is not agreeing or stipulating to any of the recitals in Section II, but does consent to the sale, and the procedures set forth in Section III.

[signatures follow on next page]

AGREED:

2B FARMS

By: Terry "Bo" Robinson
Terry "Bo" Robinson, its General Partner

Dated: 5-16-23

FIRST BANK & TRUST

By: _____
_____, its _____

Dated: _____

BANKRUPTCY ESTATES OF McCLAIN FARMS, LLC,
McCLAIN FEED YARD, LLC and 7M CATTLE, LLC

By: _____
Kent Ries, Chapter 7 Trustee

Dated: _____

AGREED:

2B FARMS

By: _____

Terry "Bo" Robinson, its _____

Dated: _____

FIRST BANK & TRUST

By: 

Director Special Assets, its SVP

Dated: May 16, 2023

BANKRUPTCY ESTATES OF McCLAIN FARMS, LLC,
McCLAIN FEED YARD, LLC and 7M CATTLE, LLC

By: _____

Kent Ries, Chapter 7 Trustee

Dated: _____

AGREED:

2B FARMS

By: _____

Terry "Bo" Robinson, its _____

Dated: _____

FIRST BANK & TRUST

By: _____

_____, its _____

Dated: _____

**BANKRUPTCY ESTATES OF McCLAIN FARMS, LLC,
McCLAIN FEED YARD, LLC and TM CATTLE, LLC**

By: _____

Kept Ries, Chapter 7 Trustee

Dated: _____

5/16/23